

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.345 OF 2022

1) Rameshchandra Satyanarain

Jhunjhunwalla

2) Rajeev Rameshchandra

Jhunjhunwala

...Applicants

Versus

The State of Maharashtra and Anr.

...Respondents

...

Mr. Niranjan Mundargi with Mr. Ramesh Dule-Patil, Ms Lisa Das,
Mr. Vivek Yadav with Ms. Keral Mehta i/b. M/s. Jay and Co.
for the Applicants.

Mr. S.V. Gavand, APP for the Respondent-State.

Mr. Bapusaheb Bagal, PI, Malad Police Station, present.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 04th AUGUST, 2023.

P. C. :-

1. This is an application under Section 438 of the Cr.P.C. filed by the aforesaid Applicants apprehending their arrest in Crime No.836 of 2021 registered with Malad Police Station, Mumbai, for the offences punishable under Sections 323, 377, 504 and 506 r/w. 34 of the IPC and Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences (POCSO) Act, 2012.

2. Before adverting to the facts of the case, it is necessary to note that the Respondent No.2, the mother of the victim was duly

served with a notice. In view of the letter addressed by Respondent No.2 directly to the Court, this Court by order dated 13/12/2022 appointed Advocate Ms Siddhi Bhosale to represent Respondent No.2 in the present case. Subsequently, on 15/03/2023 one Kiran Mirani, who claimed to be the brother-in-law of Respondent No.2 appeared before the Court and made a statement that Respondent No.2 wishes to appear and argue the matter in person. On 30/03/2023 said Kiran Mirani once again sought time on the ground that the First Informant was unable to remain present. The first informant for whatsoever reason, refrained from appearing before the Court. The matter was pursued by her brother-in-law – Kiran Mirani, who on one pretext or the other tried to delay the hearing. Since the matter could not be adjourned time and again, Ms. Amita Kuttikrishnan, an Advocate from Legal Aid Panel was appointed to espouse the cause of the victim.

3. On 13/04/2023, the First Informant sent a letter stating that she was unable to contact the appointed Advocate and requested to appoint a senior Advocate in the matter. The appointed Advocate is a well experienced lawyer and in practice since last 22 years. She is also on the panel of CBI. Hence, request to appoint any other Advocate was declined. Ms Kuttikrishnan, learned counsel had made a

statement that brother-in-law of the First Informant had given her instructions and had sought time to file reply. On 08/06/2023, Ms Kuttikrishnan sought discharge on the ground that Respondent No.2 had told her that she would be appearing in person. Accordingly, learned appointed advocate was discharged.

4. Learned APP states that the First Informant was intimated the date of today's hearing. He has placed on record copy of the extract of the general diary. A perusal of the same reveals that date of today's hearing was duly notified to the first informant. Learned APP has also placed before me Whatsapp messages received from Kiran Mirani, brother-in-law of the First Informant, stating that the First Informant is unable to appear before this Court because of her ill health. He states that the Court should consider the detailed reply and written submissions and all the records whilst deciding the application.

5. Heard Mr. Niranjana Mundargi, learned counsel for the Applicants and Mr. Gavand, learned APP for the State. The Respondent No.2 has chosen not to appear either in person or through a lawyer engaged by her or from Legal Aid Panel. I have perused the records and considered the submissions advanced by the learned

counsel for the respective parties.

6. The records prima facie reveal that the Applicants and the First Informant and her family members were neighbours, residing on the same floor of a building at Malad. It appears that their relations are strained and they have filed several proceedings against each other. The gist of the litigation in brief is as under :-

(i) On 17/12/2021, Kiran Mirani, brother-in-law of the First Informant lodged FIR against some unknown persons alleging that his laptop was hacked by some unknown persons. The Applicants herein were interrogated in the said crime. It is stated that they have not been arrayed as accused in the said crime.

(ii) On 31/12/2020, wife of the Applicant No.2 lodged the FIR against Mirani Family, pursuant to which Crime No.940 of 2020 came to be registered against the family members of the First Informant for offences punishable under Sections 354(A) and 509 of the IPC and Section 12 of the POCSO Act.

(iii) On 01/01/2021, the mother of the First Informant lodged the FIR against the Applicants and their family members, pursuant to which Crime No.1 of 2021 came to be registered for the offences punishable under Sections 354, 500, 504 and 506-II of the IPC and Sections 8 and 12 of the POCSO Act.

(iv) On 06/11/2021, the First Informant lodged the subject FIR against the Applicants and their family members, pursuant to which Crime No.836 of 2021 came to be registered for the offences punishable under Sections 323, 377, 504 and 506 r/w 34 of the IPC and Sections 4, 6, 8 and 12 of the POCSO Act.

(v) On 17/12/2021, wife of Applicant No.2 lodged a FIR against one Chetan Mirani and other family members of the First Informant, pursuant to which Crime No.903 of 2021 came to be registered for the offences punishable under Sections 419,504, 506 (2) r/w 34 of the IPC and Section 66 (C) of the Information Technology Act, 2000.

7. The records reveal that both parties subsequently settled the dispute amicably and entered into a MoU dated 05/01/2022. It is stated that acting on the said MoU, the First Informant and her family members have filed petitions to quash the FIRs registered against them. The Applicants herein have also filed the petition to quash the proceedings against them, on the basis of the same MoU. Mr. Mundargi, learned counsel for the Applicants states that the First Informant and Kiran Mirani have now opposed the quashing proceedings on the ground that they were coerced to enter into the said MoU.

8. Now coming to the merits of the matter, the records reveal that the First Informant and her family members left the premises at Malad and are residing at Kandivali since January, 2021. The First Informant, the mother of the victim, lodged the FIR dated 06/11/2021 alleging that on the day of 'Gokulashtami' which was on 30/08/2021, the victim told her that on 25/11/2020, at about 06:00 p.m., when he had visited the house of the Applicants, he saw the Applicant No.1 who is 80 years of age and his son- the Applicant No.2 who is in mid fifties, watching some video on their mobiles. They forced him to watch the said pornographic video under threats. They touched him

inappropriately. The Applicant No.1 disrobed him while the Applicant No.2 kissed him and took his penis in his mouth. The Applicant No.1 allegedly video recorded the incident and threatened to make it viral if he disclosed the incident to any one. It is alleged that about three days later, the co-accused-the spouses of the Applicants herein, threatened to make the video viral, in case he disclosed the incident to anyone.

9. The records reveal that though the crime was registered on 06/11/2021, the first informant did not co-operate and did not allow the Investigating Officer to record the statement of the victim, to produce the victim before CWC or before the Magistrate. On 27/04/2023, learned APP had made a statement that despite several reminders, the First Informant had not produced the victim before the learned Magistrate to record statement under section 164 of Cr.P.C. Mr. Kiran Mirani, brother-in-law of the First Informant who was present in the Court made a statement that there was threat to the life of the victim. The victim was otherwise attending the school regularly. However, considering the concern expressed by the brother-in-law of the First Informant, directions were given to the Investigating Officer to provide necessary protection to the victim in order to enable him to appear before the Court for recording statement under Section 164 of

the Cr.P.C. as well as the statement before CWC.

10. On 08/06/2023, learned APP once again made a statement that the Investigating Officer had approached the First Informant on 18/05/2023, 25/05/2023, 29/5/2023 and 30/05/2023 so as to provide protection to the victim and to take him to the Magistrate for recording statement under Section 164 of the Cr.P.C., despite which the First Informant did not co-operate and did not allow the Investigating Officer to produce him before the learned Magistrate. It was only on 06/06/2023 that the First Informant on her own produced the victim before the learned Magistrate and his statement under Section 164 of the Cr.P.C. was recorded.

11. Learned APP has placed before me copy of statement recorded under Section 164 of the Cr.P.C., wherein the victim has stated that the Applicant No.1, (who is 80 years old man) and his son, Applicant No.2 (who is in mid fifties) were watching some pornographic videos on their mobile and that they had sexually abused him and also recorded the act on the mobile.

12. No doubt the allegations levelled against the Applicants are

serious. It is however relevant to note that the victim was allegedly sexually abused on 25.11.2020, when he was thirteen years of age. He narrated the incident to the first informant on 30/08/2021 and the FIR was lodged on 06/11/2021. It is true that the delay in lodging the FIR cannot be a sole factor to doubt the allegations of sexual abuse. It is however to be noted that in the instant case, the parties are at loggerheads since long and have been lodging complaints against each other at the drop of the hat. In such circumstances, the prolonged unexplained delay prima facie creates a doubt and gives rise to the suspicion as to the false implication.

13. It is also to be noted that apart from the delay in lodging the FIR, there is considerable and deliberate delay in producing the victim before the JMFC and CWC for recording the statement. In fact, the statement of the victim came to be recorded on 06/06/2023 i.e., after a period of one year from the date of registration of the offence. Considering the previous acrimony between the parties, prima facie, the possibility of tutoring the victim and the victim being used as a pawn to settle personal scores with the Applicants cannot be ruled out.

14. Learned APP states that the Applicants have surrendered

their mobiles. The same was sent to the Forensic Department and the forensic report does not support the contention of the First Informant and the victim. The Applicants have appeared before the Investigating Officer and they have been interrogated and their presence is not required for custodial interrogation.

15. Considering the above facts and circumstances, in my considered view this is a fit case to exercise discretion under Section 438 of the Cr.P.C.

16. Hence, the application is allowed on the following terms and conditions:-

- (i) In the event of arrest of the Applicants in Crime No.836 of 2021 registered with Malad Police Station, Mumbai, they are ordered to be released on bail on executing the PR bonds of Rs.25,000/- each with one or two sureties in the like amount ;
- (ii) The Applicants shall report to the concerned Investigating Officer as and when required by the

Investigating Officer for the purpose of investigation;

(iii) The Applicants shall not interfere with the victim in any manner ;

(iv) The Applicants shall not tamper with the prosecution evidence and or influence the witnesses in any manner;

(v) The Applicants shall keep the Investigating Officer informed of their current address and mobile contact numbers, and/or change of residence or mobile details, if any, from time to time.

17. The application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)